GENERAL CRUDE OIL COMPANY

IBLA 75-201 Decided March 28, 1975

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W 46226.

Affirmed.

1. Mineral Leasing Act: Lands Subject to -- Oil and Gas Leases: Lands Subject to -- Indian Lands: Ceded Lands

   The Mineral Leasing Act of 1920 is not applicable to lands of the Wind River Indian Reservation which were ceded by the Indians to the United States in trust for disposition but were subsequently restored to tribal ownership. Such lands may be leased only under the Act of May 11, 1938, 25 U.S.C. § 396a et seq.

2. Words and Phrases

   The term "lands" can be construed as covering mineral interests constructively severed from the surface estate.

3. Mineral Leasing Act: Lands Subject to -- Oil and Gas Leases: Lands Subject to -- Indian Lands: Ceded Lands

   The Mineral Leasing Act of 1920 is not applicable to the ceded but undisposed of lands of the Wind River Indian Reservation. Such lands may be leased only under the Act of August 21, 1916, 39 Stat. 519.

APPEARANCES: James R. Learned, Esq., Cheyenne, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

General Crude Oil Company, a Delaware corporation, has appealed from a decision of the Wyoming State Office, Bureau of Land Management,

dated October 2, 1974, which rejected its oil and gas lease offer for the stated reason that the lands are under the jurisdiction of the Bureau of Indian Affairs.

The lease offer, filed pursuant to the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. § 181 et seq. (1970), describes the following lands in T. 8 N., R. 1 E., W.R.M., Wyoming:

Sec. 14: SW 1/4 SW 1/4,
Sec. 15: SE 1/4 SE 1/4,
Sec. 22: N 1/2 NE 1/4,
Sec. 33: S 1/2 SE 1/4, NE 1/4 SE 1/4,
Sec. 34: SW 1/4 SW 1/4,
Sec. 35: SE 1/4 SW 1/4,

containing 360 acres. 1/

The above-described lands are within the boundaries of the Wind River Indian Reservation which was established by the treaty of July 3, 1868, with the Shoshone Indians, and ratified on February 24, 1869 (15 Stat. 673). These lands are also within a portion of the Wind River Indian Reservation that was later ceded in trust to the United States by the Indians of the Reservation for disposition in accordance with the agreement of April 21, 1904, as amended and ratified by the Act of March 3, 1905 (33 Stat. 1016).

The oil and gas status plat in the case file shows that the subject lands have been patented with reservations of all minerals to the United States.

Appellant contends that the reserved minerals in the lands are subject to leasing under the Mineral Leasing Act of 1920 as the minerals have never been restored to tribal ownership; therefore, the lands cannot be leased by tribal action under the Act of May 11, 1938 (52 Stat. 347), as amended, 25 U.S.C. §§ 396a-396g (1970), because all ceded lands in the Wind River Reservation were expressly excluded from the purview of that statute. Appellant further contends these minerals cannot be restored to tribal ownership under the Act of July 27, 1939 (53 Stat. 1128), 25 U.S.C. §§ 571-577 (1970), because that act authorizes only the restoration of "undisposed-of surplus or ceded lands," whereas the subject lands have been patented and cannot be classified as "undisposed-of."

1/ We note that the appeal describes all of the lands in the offer, with the exception of the NE 1/4 SE 1/4 of Sec. 33, as containing 320 acres. Therefore, the decision below became final as to said subdivision. However, this is a matter of no moment, in view of our findings herein.

We reject these arguments advanced by appellant.

The records reflect the fact that the rights to all of the minerals in some of the above-described lands, namely

T. 8 N., R. 1 E., W.R.M.,
Sec. 33, NE 1/4 SE 1/4, S 1/2 SE 1/4,
Sec. 34, SW 1/4 SW 1/4,
Sec. 35, SE 1/4 SW 1/4,

were restored to tribal ownership and added to and made part of the Wind River Reservation pursuant to the authority contained in section 5 of the Act of July 27, 1939, 25 U.S.C. § 575 (1970), by Public Land Order 5427 of July 23, 1974, 39 F.R. 27561, 27562 (July 30, 1974).

[1] The Mineral Leasing Act of February 25, 1920, is not applicable to oil and gas deposits in lands in the Wind River Indian Reservation which were ceded in trust for disposition but which have been restored to tribal ownership by virtue of the authority contained in section 5 of the Act of July 27, 1939, supra. The Mineral Leasing Act of 1920 applies to deposits of oil or gas and lands containing such deposits owned by the United States, 30 U.S.C. § 181 (1970), and to such deposits which have been reserved by the United States when the lands have been disposed of under laws reserving to the United States such deposits, 30 U.S.C. § 182. Indian tribal lands are not "owned by the United States" within the meaning of that phrase. Helen Malette, A-25880 (July 7, 1950); Mildred G. Lyon, A-25879 (July 3, 1950).

The leasing of these lands, which have been restored to tribal ownership, for oil and gas development may be accomplished only under the provisions of the Act of May 11, 1938, 25 U.S.C. §§ 396a-396g (1970), and the departmental regulations contained in 25 CFR Part 171. Helen Malette, supra; Mildred G. Lyon, supra. It is true, as appellant contends, that section 5 of the Act of May 11, 1938, 25 U.S.C. § 396f (1970), excepts ceded lands of the Wind River Reservation from the leasing provisions of that Act. However, the lands and mineral deposits which have been restored to tribal ownership, and added to and made a part of the Reservation, are no longer ceded lands within the meaning of that provision.

[2] There is no merit to appellant's argument that the reserved minerals in the subject lands cannot be restored to tribal ownership under the Act of July 27, 1939, supra, because the subject lands have been patented and that act authorizes only the restoration of "undisposed-of * * * ceded lands." Such a theory would require us to put a very narrow construction on the term "lands" as used in the 1939 act, which we feel was not the intent of Congress. The term "lands"

can be construed as covering mineral interests constructively severed from the surface estate. See Solicitor's Opinion M-36745 (April 19, 1968), and cases cited. The Solicitor added:

> In my opinion, Congress clearly intended the Act of May 11, 1938, to cover mineral interests in tribal ownership. Pertinent to this point is the Act of August 27, 1958 (72 Stat. 935; Historical Note to 25 U.S.C. § 611), restoring to the Indians of the Wind River Reservation the mineral interests in lands previously ceded to the United States, title to which had been extinguished by the Act of August 15, 1953 (67 Stat. 592). Under the 1953 Act, the lands and minerals had been restored to the public domain and made subject to the Mineral Leasing Act of 1920, supra, with a percentage of the mining income payable to the tribe. The 1958 Act specifically provided that the minerals restored to the tribe be administered and leased in accordance with the provisions of the Act of May 11, 1938.

Also see Solicitor's Opinion, M-36776 (May 7, 1969).

[3] Although the remaining lands in the subject oil and gas lease offer have not as yet been restored to tribal ownership pursuant to section 5 of the Act of July 27, 1939, supra, they are not subject to the operation of the Mineral Leasing Act of 1920. The Department has held that the Indians of the Wind River Indian Reservation are the beneficial owners of the lands ceded in trust to the United States for disposition under the agreement of April 21, 1904, as ratified by the Act of March 3, 1905, supra, and yet undisposed of; that the Indians are entitled to the proceeds derived from the use of such lands, including their development for oil and gas; and, accordingly, that such lands are not "owned by the United States," within the meaning of that phrase as used in the Mineral Leasing Act of 1920. These ceded but undisposed-of lands can be leased for oil and gas development only in accordance with the provisions of the Act of August 21, 1916, 39 Stat. 519, and the departmental regulations in 25 CFR Part 184. Helen Malette, supra; Florence E. Gallivan, 60 I.D. 417, 420 (1950).

Appellant also contends that the reserved minerals in the subject oil and gas lease offer were not affected by the Act of August 27, 1958, 72 Stat. 935, because they are not within the specific area designated in that statute. This is true but not material. The 1958 act is one of two acts covered in the Historical Note to 25 U.S.C.A. § 611, which pertains to lands within the ceded portion of the Reservation that had been withdrawn for the Riverton Reclamation Project. The Indian title to these reclamation lands had been extinguished by the Act of August 15, 1953, 67 Stat. 592,

but the 1958 act returned all interest in the minerals to the Indians and provided that the minerals shall be administered and leased in accordance with the provisions of the Act of May 11, 1938, supra. During the period intervening between these two acts, these reclamation lands were considered as public domain subject to leasing under the Mineral Leasing Act of 1920 with 90 percent of the gross receipts being deposited to the credit of the Indians. See United States ex rel. Shoshone Indian Tribe v. Seaton, 248 F.2d. 154 (D.C. Cir. 1957), cert. denied 355 U.S. 923 (1958).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING SPECIALLY:

I agree that the lease offer should be rejected. Appellant has not shown by any persuasive argument, with any supporting authority, that the mineral deposits are leasable under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. (1970). At most, appellant's appeal raises some questions as to the appropriate authority under which the reserved mineral deposits may be leased.

In Florence E. Gallivan, 60 I.D. 417, 420 (1950), the Solicitor of this Department specifically ruled that where some of the ceded lands of the Shoshone or Wind River Indian Reservation had been patented with a reservation to the United States of the minerals underlying the patented lands, the United States holds the reserved minerals in trust for the Indian tribe which ceded the lands. He concluded, "* * * such minerals are no more subject to leasing under the provisions of the Mineral Leasing Act of 1920 than ceded lands which have not been patented." He also pointed out that the consistent administrative practice and long-standing administrative interpretation of the pertinent laws precluded application of the Mineral Leasing Act of 1920 to the ceded lands of the reservation, and that this practice and interpretation should not be disturbed in the absence of a showing that it is clearly erroneous. No such showing was made in that case and no persuasive showing has been made in this case. For this reason, I concur that the offer is properly rejected.

Joan B. Thompson
Administrative Judge